

ADVISORY OPINION 94-024

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121.135(4).

November 23, 1994

Francis X. Smith, Treasurer
Rapier Smith for Senator
207 N. Third Street
Bardstown, Kentucky 40004

Dear Ms. Smith:

Thank you for contacting the Registry. The facts to your letter may be summarized as follows:

You are the campaign treasurer for C. Rapier Smith, a candidate for State Senator in the 1994 general election. Recently, you were advised by the Registry to amend an Election Finance Statement for the reporting period June 6, 1994 to October 4, 1994. The amended report reflects that Mr. Smith received a personal bank loan from Farmer's Bank and Trust Company in the amount of eighty-seven thousand dollars (\$87,000) which was subsequently deposited into the campaign account. The amended report reflects this deposit as a contribution. The first report showed that the \$87,000 was a loan from the bank made directly to the campaign. (Both reports are attached.) In your letter, you state that the loan from the bank was permissible under KRS 121.015(7)(b). You, therefore, believe your first report for the period of June 6, 1994 to October 4, 1994, was correct, and, that the amended report was unnecessary.

Based on the facts in your letter, your question may be stated as follows:

Whether the \$87,000 loan should be reported during the June 6, 1994 to October 4, 1994, reporting period as a contribution made by the candidate to his campaign, or as a bank loan made directly to the campaign.

KRS 121.015(6)(a) defines a "contribution" as a "payment, distribution, loan, deposit, or gift of money or other thing of value, to a candidate, his agent, a slate of candidates, its authorized agent, a committee, or contributing organization." Further, KRS 121.015(7)(b) provides that a "bank loan" is not a contribution if made in accordance with "applicable banking laws and regulations and in the ordinary course of business."

In response to your question, the Election Finance Statement which covered the above reporting period, should be reported as a contribution or as a loan depending on whether the loan was obtained and secured directly by the campaign committee or whether the loan proceeds went to the candidate, and the note was signed and secured by the candidate personally. Bank documents should reflect the actual status of the loan.

KRS 121.150(13) permits a candidate to loan his campaign committee no more than \$10,000 per election. Registry records reflect that Mr. Smith had previously loaned \$10,000 to his campaign.

Therefore, unless the \$87,000 loan was made to his campaign committee directly, the amount would be a contribution from the candidate to his campaign.

In summary, the first Election Finance Statement you filed with the Registry was correct provided the bank loan was in fact made directly to the campaign. On the other hand, if the bank loan was made to the candidate and secured by him personally, then that amount is a contribution to his campaign, and the amended statement is correct.

Finally, it should be noted that KRS 121.150(16) does not permit a candidate to solicit or accept contributions for election expenses after the date of the election. Therefore, if the debt is owed by the campaign, you must continue filing supplemental reports with the Registry until all debts have been settled. If the debt was a personal debt and, therefore, a contribution to the campaign, then the candidate remains personally liable. A knowing violation of KRS 121.150(16) is a Class D felony.

Please contact us if you have further questions. Thank you.

Sincerely,

Rosemary F. Center
General Counsel

RFC/db